GREAT ONE COCONUT PRODUCTS INDUSTRIES (M) SDN. BHD.

v.

MALAYAN BANKING BHD.

HIGH COURT MALAYA, KUALA LUMPUR
ZAKARIA YATIM J
[SUIT NO. C557 OF 1982]
10 MAY 1985

DAMAGES: *Defendant wrongfully dishonoured plaintiff's bank drafts - Plaintiff lost its reputation and suffered a loss in business - Assessment of damages.*

The plaintiff company bought 5 bank drafts from the Kepong branch of the defendant, which the plaintiff then gave to its clients being payment for the supply of coconuts. When the drafts were first presented on 2 May 1981, they were dishonoured and the same happened on 4 May 1981. All the drafts were finally cleared on 6 May 1981. The executive director of the plaintiff testified that as a result of this dishonouring the plaintiff lost its reputation and suffered a loss in business. Interlocutory judgment in favour of the plaintiff has already been entered. The parties thence are now appearing for an assessment of damages.

Held:

[1] There was breach of contract and since the plaintiff was held to be a trader, it was entitled to recover substantial damages for the wrongful dishouring of its bank drafts. It need not even plead or prove actual damage. The right of a trader to substantial damages for the wrongful dishonouring of his cheque is really founded upon the implication of defamation.

[2] In relation to quantum of damages, there was no evidence to show that the drop in sales or the losses suffered by the plaintiff was the result of the dishonour of the bank drafts.

[3] Taking into account the facts of this case, substantial damages in favour of the plaintiff in the sum of RM15,000.00 was awarded.

[Costs and interests to plaintiff.]

Cases referred to:
Hadley v. Baxendale [1954] 23 Ex 179
Ng Cheng Kiat v. Overseas Union Bank [1984] 2 MLJ 140; [1984] 2 CLJ (Rep) 285
Gibbons v. Westminster Bank Ltd. [1939] 2 KB 882
Bank of New South Wales v. Milvain [1884] 10 Vict LR (Cas. at Law) 3
Patrick Kinlan v. Ulster Bank Ltd. [1928] IR 171
Baker v. Australia and New Zealand Bank [1958] NZ LR 907

Other sources referred to:
Paget's Law of Booking 9th Edn. at p. 240
The Law and Practice of Banking 2nd Edn. vol. 1, p. 84

For the plaintiff - David Alfred; M/s. Sanggara & Co.
For the defendant - Nagarajah; M/s. Shook Lin & Bok

JUDGMENT

Zakaria Yatim J:

On 17 May 1984, V.C. George J; entered interlocutory judgment in favour of the plaintiff and ordered a date to be fixed for assessment of damages. On 2 May 1985, Counsel for both parties appeared before me for the purpose of assessment of damages.

The plaintiff is a company incorporated in Malaysia having its principal place of business at No. 589 Shop House, Taman Usaha Eshan, Kepong, Kuala Lumpur. The defendant is a Company incorporated in Malaysia with the registered office at No. 92, Jalan Bandar, Kuala Lumpur and carries oil the business of banking with branch offices throughout Malaysia, one of which is at Kepong, Kuala Lumpur.

Damages were suffered by the plaintiff as a result of the defendant wrongfully dishonouring the plaintiff's own bank drafts. The plaintiff, for valuable consideration bought five bank drafts from the Kepong Branch of Malayan Banking. The plaintiff then gave the bank drafts to its clients being payment for the supply of coconuts. When the bank drafts were presented by the client at the Tanjong Karang Branch of the Malayan Banking, they were dishonoured. When the drafts were first presented for payment on 2 May 1981 at the said bank, no payment was made on that date. The defendant wanted to obtain clearance from the issuing branch but was unable to do so due to telegraphic breakdown in Kepong. The bearers of the said draft were asked to come again on 4 May 1981. When the drafts were presented again on 4 May, they were dishonoured. All the drafts, were, however, cleared on 6 May 1981. This is a clear case of a breach of contract.

The executive director of the plaintiff company, Mr. Ngan Chuan Choo, testified in Court that he bought the said bank drafts to pay the clients, who supplied the plaintiff with coconuts. As a result of the defendant dishonouring the bank drafts, the plaintiff company lost its reputation. Coconut suppliers wanted payment in cash in subsequent dealings, According to Mr. Ngan, his company's business dropped in the second half of 1981. During the first half of 1981, the sales were 55% of the full year's total sales. During the second half of the year, the sales were 45% of the 1981 sales. There was a drop in the second half of 1981. In 1982, the whole year's sales were lower than those in 1981. He attributed the drop in sales to the incident where the plaintiff's bank drafts were dishonoured by the defendant bank.

Another witness, Mr. Richard Ho Onn, who is a company auditor, confirmed that there was a decline in the performance of the plaintiff company. He said that the total sales during the first six months of 1981 were RM1,176,104.60. The sales for the second half of 1981 were RM1,061,746.40. According to him, the sales for the first six months of 1981 were 55% of the total sales and 45% of total sales for the second half of the year. In the first half of 1982 the percentage was 46% of the total sales for 1981. In the second half of that year, the percentage was 37%.

Mr. Nagarajah, counsel for the defendant cited *Hadley v. Baxendale* [1954] 23 Ex 179 and *Ng Cheng Kiat v. Overseas Union Bank* [1984] 2 CLJ (Rep) 285. In the latter case, Wan Hamzah J as he then was, awarded damages in the sum of RM500.00 against the Bank for breach of contract for wrongfully refusing to honour the plaintiff's cheque; and RM500.00 for libel in printing the words "account closed" on that cheque and publishing them. Relying on *Ng Cheng Kiat's case supra.*, Mr. Nagarajah submitted that, in the present case, the plaintiff should be awarded damages in the sum of RM500.00.

Counsel for the plaintiff, Mr. David Alfred, submitted that his client is a trader and therefore he is entitled as of right to substantial damages. He claimed that his client was entitled to damages in the sum of $75,000.00 for the dishonour of the said bank drafts.

I agree with Mr. Alfred that where the plaintiff is a trader he is entitled to recover substantial damages for the wrongful dishonour of his bank drafts. He need not even plead or prove actual damage. This principle is supported by the following authorities:

In Gibbons v. Westminster Bank Ltd. [1939] 2 KB 882 Lawrence J said:

> The authorities which have been cited in argument all lay down that a trader is entitled to recover substantial damages for the wrongful dishonour of his cheque without pleading and proving actual damage, but it has never been held that that exception to the general rule as to the measure of damages for breach of contract extends to any one who is not a trader.

Paget's Law of Banking, 9th Edn. at p. 240 also states:

> Every authority from *Foley v. Hill to Joachimson v. Swiss Bank Corporation* and the Bills of Exchange Act alike recognise that the Banker's primary function and duty is to honour his customer's cheques, provided the state of the account warrants his doing so and there is no legal reason or excuse to the contrary. Apart from his contractual obligation, or as a consequence thereof, the paying banker must remember that his customer's credit is or may be seriously injured by the return of one of his cheques dishonoured, and the smaller the cheque, the greater the possible damage to credit.
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> Theoretically, substantial damages may be given against the bank without proof of actual loss to the customer, but a more reasonable view appears to have gained favour. It is contended that the presumption of necessary serious injury only applies where the customer is a business man, and that, at least in other cases, actual damage must be pleaded and proved. As Lord Birkenhead LC said in *Wilson v. United Counties Bank Ltd.:*
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> The *ratio decidendi* in such cases is that the refusal to meet the cheque, under such circumstances, is so obviously injurious to the credit of a trader that the latter can recover, without allegation of special damage, reasonable compensation for the injury done to his credit'.

In *Ng Cheng Kiat's case, supra.,* the learned Judge, at p. 140, said:

> Where a customer brings an action against his bank for wrongfully refusing to pay a cheque which he has drawn, the amount of the damages for breach of contract depends on whether or not the customer is a trader . In an action for breach of contract for wrongfully dishonouring a trader's cheque, the plaintiff is entitled to recover substantial but reasonable damages for injury to his commercial credit without the necessity of alleging and proving any actual damage ...

The case of *Hadley v. Baxendale, supra.,* which was cited by Mr. Nagarajah has no application as it is not a case of a dishonour of bank drafts or cheques.

The question that arises now is who is a trader. In the *Bank of New South Wales v. Milvain* [1884] 10 Vict LR (Cas. at Law) 3, Holroyd J said:

> I think 'trader' means one whose business is to buy and sell, or to make up raw material into merchandise of which he afterwards disposes.

In the instant case, the plaintiff is a trading company. It manufactures dessicated coconuts for export. Its factory is located at Tanjong Karang and it obtains the copra from suppliers in the Tanjong Karang area. I have no doubt that the plaintiff is a trader.

I shall now deal with the quantum of damages to be awarded to the plaintiff.

As stated earlier, Mr. Nagarajah, relying on *Ng Cheng Kiat's case supra.,* asked the Court to award RM500.00 damages to the plaintiff- In that case, the Court awarded RM500.00 as nominal damages and another RM500.00 for libel in printing the words "account closed". A customer is in fact entitled to substantial damages for libel. Indeed the right of a trader to substantial damages for the wrongful dishonouring of his cheque is really founded upon the implication of defamation. See *Patrick Kinlan v. Ulster Bank Ltd.* [1928] IR 171.

In the Ng Cheng Kiat's case, the learned Judge awarded RM500.00 damages for libel after applying the rule for assessment of damages for libel in *Baker v. A ustralia and New Zealand Bank* [1958] NZ LR 907. The learned Judge must have taken into account the following factors:

Firstly, the plaintiff's account was closed by the bank on 29 November 1978, as the account was in debit.

Secondly, the plaintiff had operated his account in "an unproper and unsatisfactory manner." On four occasions the plaintiff issued cheques for amounts far in excess of the credit balance. Many cheques drawn by the plaintiff were dishonoured.

Thirdly, the bank manager apologised to the plaintiff after the cheque had been dishonoured.

Taking into consideration these factors, I agree with Wan Hamzah J when he awarded RM500.00 for the libel.

In the *Baker's case supra.,* which was decided in 1958, the plaintiff was not a trader and the Court awarded her nominal damages in the sum of £6. The Court, however awarded the plaintiff £100 damages for libel. In that case, the plaintiff had sufficient amount of money in the bank to entitle her to draw the cheques. When the dishonour was discovered, there was no retraction by or an apology from the bank.

In the present case, Mr. Alfted asked the Court to award damages in the sum of RM75,000.00. His claim for this amount was based On the drop in, sales after the bank drafts were dishonoured. According to him, the sum of RM75,000.00 represents the losses suffered by the plaintiff as a result of the dishonour. I am unable to accept this argument as there is no evidence to show that the drop in sales or the losses suffered by the plaintiff was the result of the dishonour.

The plaintiff, however is still entitled to claim substantial damages, but the damages must be reasonable. See J.M. Holden, *The Law and Practice of Banking,* 2nd. Edn. Vol. 1., p. 84. The amount asked for by the plaintiff is far too exorbitant. The question is what are the factors to be taken into consideration in order to award substantial but reasonable damages in favour of the plaintiff in the present case. In my opinion, the factors to be taken, into consideration are as follows:

Firstly, the position and standing of the plaintiff as a trader;

Secondly, the nature of the trade of the plaintiff;

Thirdly, the conduct of the Bank in dishonouring the five bank drafts; and

Fourthly, whether there was an injury to the credit of the plaintiff as a trader.

In the instant case, the plaintiff is a company incorporated in Malaysia having its principal place of business at Kepong, Kuala Lumpur. The plaintiff deals with the export of dessicated coconuts. It has its own factory at Tanjong Karang and it obtains copra from suppliers in Tanjong Karang area. The plaintiff company has been in existence since its incorporation on

5 October 1979. Previous to the incident, i.e. when the bank drafts were dishonoured, the plaintiff company had been paying its suppliers with bank drafts. On 2 May 1981, the bank drafts in question were presented for payment. The defendant attempted to obtain clearance from the issuing branch but was unable to do so due to telegraphic breakdown in Kepong. The bearers were asked to come again on 4 May 1981. On that date the drafts were presented again for payment but instead they were returned to bearer. The draft were stamped by the bank official with the words "cheque returned" and the words "... unable to contact Kepong Branch due to phone lines out of order." Just because the Bank could not get clearance from the issuing branch for three days, it decided to dishonour the bank drafts through no fault of the plaintiff at all. In my opinion, the defendant has treated its client in a most shabby manner. The conduct of the bank was most irresponsible and utterly pre-postesous. As a result of the dishonour of the five bank drafts, the credit of the plaintiff as a trader was seriously injured. Suppliers refused to accept bank drafts, but instead they demanded cash payment from the plaintiff. In his evidence in Court, the Executive Director of the plaintiff company said:

> As a result of the Bank dishonouring the bank drafts our Company lost its reputation. Suppliers asked for cash in future dealing.

In the circumstances, I award substantial damages in favour of the plaintiff in the sum of $15,000.00 for the wrongful dishonour of the five bank drafts. In my opinion, this is a reasonable figure bearing in mind all the factors mentioned above. Costs and interests to the plaintiff.

Also found at [1985] 2 CLJ 390